

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BERNARD NORTON,
Plaintiff,

v.

SANTA ROSA POLICE DEPARTMENT, et
al.,
Defendants.

Case No. 14-cv-04352-JST

ORDER

Re: Dkt. No. 43

On September 3, 2015, Defendant City of Santa Rosa (“City”) filed a motion for summary judgment, or in the alternative, to dismiss for lack of prosecution. ECF No. 43. The City argues, in part, that the Court should dismiss this case as it relates to Defendants Officer Does 1-50 under Fed. R. Civ. Pro 41(b) for failure to prosecute. *Id.* at 18–19. The City notes that Plaintiff Bernard Norton has failed to name as a defendant the Santa Rosa Police Department officer whom Norton alleges violated his Fourth Amendment rights during a traffic stop on January 18, 2014, despite having knowledge of that officer’s identity since at least January 19, 2014. *Id.* at 14 (citing ECF No. 1 at 10).

Norton does not dispute the fact that he had knowledge of the officer’s identity by January 19, 2014. ECF No. 48 at 5. Instead, he asserts that “Plaintiff’s counsel mistakenly failed to amend the complaint to substitute Officer Diaz’s name for the DOE defendants.” *Id.* Plaintiff argues that “permitting a substitution [of Officer Diaz’s name for the DOE defendants] at this late hour in the litigation would not raise the risk of prejudice to Officer Diaz.” *Id.* at 6.

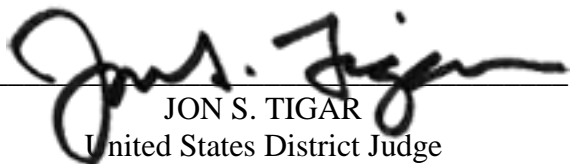
The Court construes Plaintiff’s Response brief, ECF No. 48, as a motion to amend the complaint solely for the purpose of substituting Officer Diaz for Defendants Officer Does 1-50. The Court notes that “[a] complaint may be amended to substitute the name of the real defendant when discovered, so long as there is no unreasonable delay.” Borelli v. Black Diamond

1 Aggregates, Inc., No. 2:14-CV-02093-KJM, 2015 WL 5178429, at *4 (E.D. Cal. Sept. 4, 2015).
2 Defendant City is ordered to file a response to Plaintiff's motion to amend the complaint within
3 fourteen days of the filing of this Order. Plaintiff shall file a reply brief within 7 days of
4 Defendant's response. At that time, the Court will take the question of amendment under
5 submission without a hearing.

6 The Court vacates the hearing on Defendant's Motion for Summary Judgment, ECF No.
7 43. The Court will hold that motion in abeyance pending the resolution of Plaintiff's motion to
8 amend the complaint.

9 IT IS SO ORDERED.

10 Dated: October 5, 2015

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13 JON S. TIGAR
14 United States District Judge
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United States District Court
Northern District of California